

3152 Shad Court
Simi Valley, CA 93063
May 28, 2008

Dr. Xavier Swamikannu
LARWQCB
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: The Proposed Third Draft of the Ventura Countywide
MS4 (NPDES No. CAS004002) Permit for the Ventura County
Watershed Protection District, the County of Ventura,
and the Incorporated Cities Therein--Public Workshop.

Dear Dr. Swamikannu:

This letter is a continuation of my May 27, 2008 letter
in opposition to the aforementioned item.

COMMENTS

#4 - Page 8 of 115, under Section D. Permit Coverage, "2.", it is stated "The permittees covered under this Order were designated on a system-wide basis under Phase I of the CWA Section 402(p) (3)(B)(i). The action of covering all Ventura County municipalities under a single MS4 permit on a system-wide basis was consistent with the provisions of 40 CFR 122.26(a)(3)(iv), which states that one permit application may be submitted for all or a portion of all municipal separate--continued on top of Page 9 of 115-- storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems; and the Regional Water Board may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems." While this is so, the Los Angeles Regional Water Quality Control Board also relied on the Permittees crossing all t's and dotting all i's with regards to the Ventura Countywide 1992

MS4 NPDES Permit Implementation Agreement agreements, and this was not done. If anything the 1992 Ventura Countywide MS4 Permit Implementation Agreement agreements were violated, and now so is the 2008 Amendment to the 1992 Ventura Countywide MS4 NPDES Permit Implementation Agreement.

- #5 - Page 9 of 115, under "3.", it is stated "Federal, State, Regional, or local entities within the permittees' boundaries or in jurisdictions outside the Ventura County Watershed Protection District, and not currently named in this Order, may operate storm drain facilities and/or discharge storm water to storm drains and watercourses covered by this Order. The permittees may lack legal jurisdiction over these entities under State and Federal constitutions. The Regional Water Board will work with these entities to ensure the implementation of programs that are consistent with the requirements of this Order." This is why it is not acceptable to include "Los Angeles County" under Section A. Permit Parties and History, "1." (Page 1 of 115).

If Los Angeles County is retained, then the Boeing Company's Santa Susana Field Laboratory must also be included in this Order.

- #6 - Page 9 of 115, under "7.", it is stated "Permittees should work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system through inter-agency agreements or other formal arrangements." This is a weak condition at best due to the problems already inherent with the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement agreements, and the 2008 Amendment to the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement violations.
- #7 - Page 12 of 115, second paragraph, it is stated "As discussed in prior State Water Resources Control Board decisions, in many respects this Order does not require strict compliance with water quality standards...The Order, therefore,

regulates the discharge of waste in municipal storm water more leniently than the discharge of waste from non-governmental sources." This statement contradicts the statements under "17." on Page 17 of 115, "The Regional Water Board supports Watershed Management planning to address water quality protection in the region. The objective of the Watershed Management planning is to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed."

Thus, I do not have confidence in the statements on Page 10 of 115. "The U.S. EPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica BayKeeper on March 22, 1999, under which the Regional Water Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This Order incorporates provisions incorporating approved WLAs for municipal storm water discharges and--continued on top of Page 11 of 115--requires amending the SMP after subsequent pollutant loads have been allocated and approved. In light of the statement on Page 21 of 115, under "3.", which says "The implementation of measures set forth in this Order are reasonably expected to reduce the discharge of pollutants conveyed in storm water discharges into receiving waters, and to meet the TMDL WLAs for discharges from MS4s that have been adopted by the Regional Water Board." And, in light of the statement on Page 33 of 115, under PART 4 - STORM WATER QUALITY MANAGEMENT PROGRAM IMPLEMENTATION, A. General Requirements, "1.", which says "Each permittee shall, at a minimum, adopt and implement applicable terms in this Order within its jurisdictional boundary."

#8 - Page 12 of 115, third paragraph, it is stated "Third, the local agency permittees have the authority to levy service charges, fees, or

assessments sufficient to pay for compliance with this Order. The fact sheet demonstrates that numerous activities contribute to the pollutant loading in the municipal separate storm sewer system. Local agencies can levy service charges, fees, or assessments on these activities, independent of real property ownership...The ability of a local agency to defray the cost of a program without raising taxes indicates that a program does not entail a cost subject to subvention."

With regards to the original Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement agreements: 1. they were undertaken without public hearings, and 2. the Implementation Agreement agreements' Section on amendments, and others were violated by the Permittees.

With regards to the 2008 Amendment to the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement recently undertaken by the District, the County, and almost all of the Cities (as of this writing I am not sure about the City of Ojai); 1. no public hearings were held, 2. not all Amendment to the 1992 Ventura Countywide MS4 NPDES Permit Implementation Agreement copies presented to each Permittee followed the same text, 3. most Permittees approved a Signature Page, and one followed normal local government procedure by approving a Resolution, 4. misleading statements are incorporated in the text, and 5. etceteras.

The Ventura County Watershed Protection District Board of Directors, the Board of Supervisors of Ventura County, the City of Simi Valley City Council, Mr. Raul Medina of the LARWQCB, and the Howard Jarvis Taxpayers Association have all been informed about this legal quagmire.

This is the reason that the existing NPDES Permit Program projects' related assessment fees cannot be increased.

This is the reason that Assemblyman Nava through slight of hand (by amending Assemblywoman

Karnette's proposed bill) got the Ventura County Watershed Protection Act amended, and signed by Governor Schwarzenegger to give the Ventura County Watershed Protection District the authority to levy property-related fees. Only problem is the District would have to let the voters know the story behind the existing assessment fees levied since 1992 because of Proposition 218 passed by voters in 1996.

- #9 - Page 12 of 115, last paragraph, it is stated "Fourth, the permittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. Section 1311(a)..."
- #10 - Page 22 of 115, under "7.", it is stated that "The implementation of an effective Public Information and Participation Program is a critical component of a storm water management program." And, Page 39 of 115, under "C. Public Information and Participation Program(PIPP), "1.i.", it is stated "To measurably increase the knowledge of the target audience about the MS4, the adverse impacts of storm water pollution on receiving waters and potential solutions to mitigate the impacts." So is a Public Response Program to submitted letters on public review and comment period legally noticed documents to keep State Government laws from being violated.

The County of Ventura to date has not responded to my letter submitted on the Draft Multi-Jurisdiction Hazard Mitigation Plan--the document approved by the Board of Supervisors is incomplete and inaccurate.

The Ventura County Watershed Protection District to date has not responded to my letter submitted on the Draft Flood Mitigation Plan--document approved by the District Board of Directors is incomplete and inaccurate.

The City of Simi Valley to date has not responded to my letters submitted on the FEMA/County of

Ventura/Nolte Preliminary Flood Insurance Study (FIS), and Preliminary Flood Insurance Rate Maps (FIRMs)--the documents are incomplete and inaccurate.

The City of Simi Valley does not provide written responses to my letters submitted, per City staff request, on the Preliminary Base Budget. Until this year, and only because I submitted a City Complaint Form, the City provided a copy of the current fiscal year City Budget. Otherwise, all former requests, even under the California Records Act, went unmet.

It is also stated on Page 41 of 115, under "(9)", that "The permittees shall develop and implement a behavioral change assessment strategy...in order to ensure that the PIPP is demonstrably effective in changing the behavior of the public." It is just as important that the behavior of local governments toward the citizenry is also gauged to comply with State Government public participation process laws.

- #11 - Page 27 of 115, under "22.", it is stated "This Order takes into consideration the housing needs in the area under the permittees' jurisdiction by balancing the implementation of Smart Growth and Low Impact Development techniques with the protection of the water resources of the region." For over a decade, I have been aware that the City of Simi Valley has its SCAG designed RHNA's waved time and again. This was done to get the regional mall built by showing developers that the City's medium income based on larger single family homes could support it. That was not Smart Growth because there is a large gap between expensive housing and affordable housing even if the values are declining because of the bubble.

Low Impact development may not be just around the corner, either, as far as the City of Simi Valley is concerned, because once the Boeing Company's Santa Susana Field Laboratory property is declared cleaned up by the DTSC and the area turned into the future Santa Susana State Park

the City will have to look toward high impact development to make up the Ventura County Water Works District No. 8's loss in revenue and water use. So, the areas that may be considered for this future development are the areas of: 1. Marr Ranch, 2. the Brandeis-Bardin Institute, and 3. the land north of the Ronald Reagan Presidential Library and Museum since the Simi Valley's 1988 General Plan Update will not be finalized until sometime in 2010 or beyond.

- #12 - Page 28 of 115, under "6.", it is stated "This Order may be modified or alternatively revoked or reissued prior to its expiration date or any administrative extension thereto..."
- #13 - Page 35 of 115, under "2.", it is stated "The permittees shall possess adequate legal authority to:..." Please refer to my comments under #8.
- #14 - Page 61 of 115, under "5. Mitigation Funding (a)" it is stated "A permittee or a coalition of permittees may create a management framework to fund regional or subregional solutions to storm water pollution, where any of the following situations occur:..." This is a quagmire since the Ventura Countywide Storm Water Program (the MS4 NPDES Permit Permittees) has already botched the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement agreements, and the 2008 Amendment to the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement. Please refer to my comments under #8.
- #15 - The Tables, on Pages 85 to 89 of 115, are not "reader-friendly".

ADDITIONS

1. Page 27 of 115, under Section G. Public Notification, "2.", it is stated "The Regional Water Board has notified the permittees, and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an

opportunity to make statements and submit their comments." Include the submission tools of: 1. mail, 2. facsimile, 3. E-mail, 4. walk-in(to the LARWQCB office), and 5. messenger service.

2. Include Referral of Public Complaint Forms under Interagency Coordination(Page 49 of 115).
3. Include Investigation of Public Complaints under Interagency Coordination(Page 49 of 115).
4. Include signatures by the District Board of Directors Chairperson, the Board of Supervisors Chairperson, and each of the Cities Mayors under Section H. Signatory Requirements(Page 110 of 115) what with the quagmire that the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement agreements, and the 2008 Amendment to the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement violations have wrought.

QUESTIONS

1. Page 8 of 115, under Permit Background Section "5."; it is stated in the second sentence that "The permittees are entitled, but did not elect to pursue a permit with numeric end-of-pipe limits for storm water discharges, which would have required them to satisfy specific effluent limitations rather than implement storm water management programs. Where a MS4 permittee voluntarily chooses a Best Management Practice (BMP) based storm water management program as permit effluent limitations rather than end-of-pipe numeric effluent limits, there exists no compulsion of a specific regulatory scheme that would violate the 10th Amendment to the United States Constitution." Are the statements referring to a specific regulatory scheme action by the USEPA, or the Permittees, or both?

On the basis of the legal quagmire that has resulted from the Ventura Countywide 1992 NPDES Permit Implementation Agreement agreements and the 2008 Amendment to the Ventura Countywide 1992

NPDES Permit Implementation Agreement violations by the Permittees, then the lack of compulsion to scheme is premature. If the act is lacking with regards to the USEPA, then the statement should be reflective of this.

2. Would this lack of compulsion to scheme with regards to a specific regulation also apply to the LARWQCB?
3. Why was case law City of Abilene V. EPA, 325 F.3d 657(5th Cir., 2003) noted, and not "County of Los Angeles v. State of California(1987) 43 Cal.3d 46, 57-58[finding comprehensive workers compensation scheme did not create a cost for local agencies that was subject to state subvention]"(Page 12 of 115, end of first paragraph).
4. Did LARWQCB staff know that there were a couple of Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement agreements signed by the Permittees?
5. If so, did LARWQCB staff check the text of all Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement agreements?
6. If the Permittees have all approved/adopted the Amendment to the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement, has LARWQCB staff gotten a copy? If so, has LARWQCB staff gone through the document to make sure all t's are crossed and i's dotted?
7. Was it a requirement that the LARWQCB get a copy of the Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement? If not, it should have.
8. Is it a requirement that the LARWQCB get a copy of the Amended Ventura Countywide 1992 MS4 NPDES Permit Implementation Agreement? If not, it must.
9. Page 27 of 115, under Section G. Public Notification, "3.", it is stated "The Regional Water Board staff has conducted 24 scoping meetings from February 9, 2007 through October 3,

2008, with..." Does LARWQCB staff foresee this Order being approved by the Regional Water Board after October 3, 2008?

10. Page 55 of 115, under "(C)", it is stated "Natural drainage systems, which include unlined or unimproved(not engineered) creeks, streams, rivers and their tributaries, are located in the following watersheds:..." Why is Malibu Creek not included?
11. Are the City of Simi Valley's NPDES Permit regional storm water detention basins' mitigation measures no longer required to comply with the MUN and Ventura Countywide MS4 NPDES Permits--as of this writing only 1 out of 6 - 11 dams is built, yet FEMA funding has been received by Simi Valley, and only God knows where the millions of \$ have gone?

Dr. Swamikannu, please note that Ginn Doose concurs with my comments. Please note that Ginn Doose can be reached at (707)994-6881 (her work telephone number).

Sincerely,



Mrs. Teresa Jordan